

**RESOLUTION NO. 74465**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ, CALIFORNIA, AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$31,000,000 FOR THE PURPOSE OF MAKING A LOAN TO PROVIDE REFINANCING FOR LAS VENTANAS APARTMENTS; DETERMINING AND PRESCRIBING CERTAIN MATTERS RELATING THERETO; AND APPROVING AND AUTHORIZING RELATED ACTIONS AND THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS.**

**WHEREAS**, the City of San Jose (the “City”) is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City (the “Charter”); and

**WHEREAS**, the Charter provides that the City is authorized to issue revenue bonds pursuant to California law and the City is authorized to issue revenue bonds under Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code, as amended (the “Act”), which authorizes cities to issue revenue bonds for the purpose of, among other things, refinancing the acquisition, construction and development of multifamily rental housing and capital improvements in connection with and determined necessary to such multifamily housing; and

**WHEREAS**, the Act provides that the proceeds of bonds issued by a city may be loaned to a nongovernmental owner of multifamily housing to allow such owner, who shall be responsible for the payment of such bonds, to reduce the cost of operating such housing and to assist in providing housing for low income persons; and

**WHEREAS**, Evans Lane Apartments L.P., a California limited partnership (the “Borrower”), has requested that the City sell and issue multifamily housing revenue bonds for the purpose of refinancing the construction and development of a 239-unit multifamily rental housing project to be located in the City and generally known as Las Ventanas Apartments (the “Project”); and

**WHEREAS**, the City previously issued its \$31,000,000 City of San Jose Variable Rate Demand Multifamily Housing Revenue Bonds (Evans Lane Apartments) Series 2002 H (the “Prior Bonds”) to assist in the financing of the Project; and

**WHEREAS**, the City is willing to issue not to exceed \$31,000,000 aggregate principal amount of its Multifamily Housing Revenue Refunding Bonds (as more fully described herein, the “Bonds”) and to loan the proceeds thereof to the Borrower, who shall be responsible for the payment of such Bonds, to allow the Borrower to reduce the cost of the Project and to assist in providing housing for low income persons by refunding all currently outstanding Prior Bonds; and

**WHEREAS**, the Bonds are expected to be secured by a direct-pay Credit Enhancement Agreement provided by the Federal Home Loan Mortgage Corporation (“Freddie Mac”); and

**WHEREAS**, the issuance, sale and delivery of the Bonds will be conducted in accordance with the City’s policies related thereto, and the City Council finds that the public interest and necessity require that the City at this time make arrangements for the sale of the Bonds; and

**WHEREAS**, there has been prepared and filed with the City Clerk for consideration at this meeting the documentation required for the issuance and sale of the Bonds, and such documentation is in substantially final form and an appropriate instrument to be executed and delivered for the purposes intended; and

**WHEREAS**, all acts, conditions and things required by the laws and Charter of the City and the laws of the State of California, including the Act, to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is duly authorized and empowered, pursuant to each and every requirement of law, to authorize such refinancing and to authorize the execution of the documents related thereto, for the purposes, in the manner and upon the terms provided in this resolution;

**NOW, THEREFORE**, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ THAT:

1. The City hereby finds and declares that the above recitals are true and correct.
2. Revenue bonds in one or more series are hereby approved and authorized to be issued pursuant to, and in compliance with, the Act and the Indenture (hereinafter defined), and in accordance with the Code, subject to the condition set forth herein. The Bonds are to be designated as the "City of San Jose Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Las Ventanas Apartments) Series 2008 B," in an aggregate principal amount not to exceed \$31,000,000. The Bonds shall be in the form set forth in and otherwise in accordance with the Indenture and shall be executed by the manual or facsimile signature of the City's Deputy Director of Finance (the "Deputy Director of Finance") and attested by the manual or facsimile signature of the City Clerk.
3. The proposed form of Trust Indenture (the "Indenture"), by and among the City and Wells Fargo Bank, National Association, as trustee (the "Trustee"), on file with the City Clerk, is hereby approved. The Deputy Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to execute

and deliver the Indenture and the City Clerk is hereby authorized and directed to attest the signature of the Deputy Director of Finance on said Indenture, in substantially said form, with such additions thereto or changes therein as approved by the Deputy Director of Finance upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

The date, maturity date or dates (which shall not extend beyond December 1, 2047), interest rate or rates (which shall not exceed 12%), interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption and other terms of the Bonds shall be as provided in the Indenture as finally executed.

4. The proposed form of Financing Agreement (the "Financing Agreement"), by and among the City and the Borrower, on file with the City Clerk, is hereby approved. The Deputy Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Financing Agreement in substantially said form, with such additions thereto and changes therein as the Deputy Director of Finance may approve upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.
5. The proposed form of First Amendment to Regulatory Agreement (the "Regulatory Agreement") by and among the City, the Trustee and the Borrower, on file with the City Clerk, is hereby approved. The City's Director of Housing is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Regulatory Agreement in substantially said form, with such additions thereto or changes therein as the said officials may approve upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

6. The proposed form of Bond Purchase Agreement (the "Purchase Agreement") by and among the City, the Borrower and Citicorp Global Markets Inc., as underwriter of the Bonds (the "Underwriter"), on file with the City Clerk, is hereby approved. The Deputy Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Purchase Agreement in substantially said form, with such additions thereto and changes therein as are approved by the Deputy Director of Finance upon consultation with bond counsel and the City Attorney, provided that the terms of the Bonds shall be subject to the limitations set forth in Sections 2 and 3 hereof, such approval to be conclusively evidenced by the execution and delivery thereof.
7. The proposed form of Official Statement (the "Official Statement"), on file with the City Clerk, is hereby approved and the City hereby approves the distribution of the Official Statement, including a preliminary version thereof, to prospective purchasers of the Bonds. The Deputy Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to certify that the preliminary Official Statement is deemed final as of its date, within the meaning of rule 15c2-12 promulgated under the Securities Exchange Act of 1934 and is authorized to execute the final Official Statement, with such additions thereto and changes therein as may be necessary to cause the same to carry out the intent of this Resolution and as are hereby approved upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the delivery thereof.
8. The proposed form of Intercreditor Agreement (the "Intercreditor Agreement"), by and among the City, the Trustee, and Freddie Mac, on file with the City Clerk, is hereby approved. The Deputy Director of Finance is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Intercreditor Agreement in substantially said form, with such additions thereto and changes therein as the Deputy Director of Finance may approve upon consultation

with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

9. The Bonds, when executed, shall be delivered to the Trustee for authentication; and the Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee's certificate of authentication appearing thereon, and to deliver the Bonds, when duly executed and authenticated, to or at the direction of the Underwriter in accordance with written instructions executed on behalf of the City by the Deputy Director of Finance, which said officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Trustee. Such instructions shall provide for the delivery of the Bonds to or at the direction of the Underwriter in accordance with the Purchase Agreement, upon payment of the purchase price thereof.
10. All actions heretofore taken by the officers and agents of the City with respect to the refinancing of the Project and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the proper officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents, including but not limited to an endorsement of the note and related documents, a tax certificate and agreement, an escrow agreement and such other documents and agreements as described in the Indenture, the Purchase Agreement and the other documents herein approved, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds, subject to the conditions set forth herein, and to effectuate the purposes thereof and of the documents herein approved in accordance with this resolution and resolutions heretofore adopted by the City and otherwise in order to carry out the refinancing of the Project.

11. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this resolution, whether before or after the issuance of any Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents, any transfer or other disposition of the Project, any addition or substitution of security for the Bonds or any redemption of the Bonds, may be given or taken by the City Manager, the Deputy Director of Finance or the Director of Housing, as appropriate, without further authorization by this City Council, and the City Manager, the Deputy Director of Finance or the Director of Housing is hereby authorized and directed to give any such consent, approval, notice, order or request and to take any such action that such officer may deem necessary or desirable to further the purposes of this resolution and the refinancing of the Project; provided such action shall not create any obligation or liability of the City other than as provided in the Indenture and other documents approved herein.
12. If the Deputy Director of Finance or the Director of Housing is unavailable to execute the documents hereinabove mentioned, a designee or authorized deputy thereof shall be entitled to sign in the place of the Deputy Director of Finance or the Director of Housing, respectively.
13. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.
14. This Resolution shall take effect upon its adoption.

ADOPTED this 24th day of June, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED.

NOES: NONE.

ABSENT: CONSTANT.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk